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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/769,569	01/30/2004	Roy Lim	4002-3305/PC902.00	8897
52196	7590	01/13/2006	EXAMINER	
KRIEG DEVAULT LLP ONE INDIANA SQUARE, SUITE 2800 INDIANAPOLIS, IN 46204-2709			AMARELD JR, ROBERT W	
			ART UNIT	PAPER NUMBER
			3738	
DATE MAILED: 01/13/2006				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/769,569	<b>Applicant(s)</b> LIM ET AL.	
	<b>Examiner</b> Robert W. Amareld, Jr.	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20, 50-58 and 91-105 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-7, 9-17, 19, 20, 50-58, 91-100 and 105 is/are rejected.
- 7) ☒ Claim(s) 8, 18 and 101-104 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTG/SB/08)<br>Paper No(s)/Mail Date <u>1/30/04, 1/24/05 and 10/12/05</u> | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

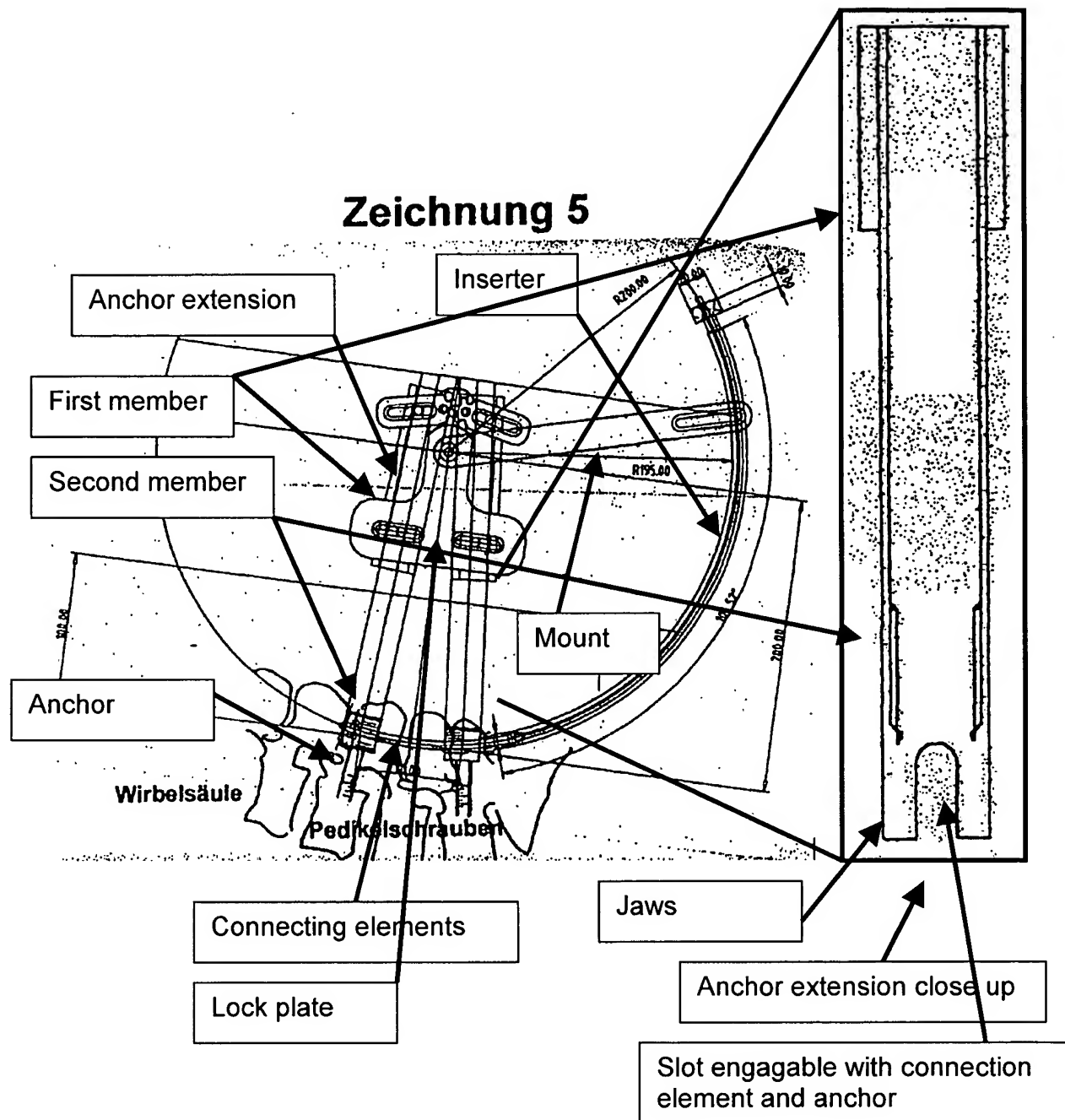
(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-7, 10, 12, 19, 50-55, 57, 58, 91-93, 96, 105 are rejected under 35 U.S.C. 102(b) as being anticipated by Kosmala (DE10027988 A1). A figure is labeled below with specific elements. The second member of the extension being mountable to the anchor and connection element via its slot and tube end. The first member and the second member being movable relative to one another, both being tubes or sleeves where the first member is larger than the second and allows for sliding of the two members, both members being fully capable of contacting the connection element, either directly or via additional connecting members. The second member is movable relative to the first to contact the connection element and the first member as well as the anchor. The unit being capable of moving the anchor and connecting element toward one another during an engagement movement of the anchor extension in the direction to the anchor for engagement. The first and second anchor extensions are manipulatable percutaneously. The inserter is movably mountable to the anchor extensions via the connection element or through the mount, where the anchor extensions are movable toward one another in common plane along the connection element,

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where the connection element is capable of moving toward and engagable to the anchor extensions in the necessary order. The connection element is shown to have a length between the two anchors, which contains a proximal, distal and flexible portion. The anchor extensions contain jaws that are fully engageable in a slot on an anchor, where the jaws are movably relative to one another where the movement is possible to occur via the bending or turning of one of the jaws. The two jaws of the extension also being 1<sup>st</sup> and 2<sup>nd</sup> bodies the form a passage in-between adapted to receive the connection element, adjacent an anchor, where the jaws could be selectively moved toward one another by bending to grip the anchor, where the passage is capable of being called "enlarged". The anchor extension includes the locking plate to secure the two anchor extensions relative to one another. The anchor is a polyaxial pedicle screw (paragraph 12) that may be engaged with the two anchor extensions where each anchor and extension will be interacting with adjacent vertebrae.

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Claims 1-7, 9-17, 19, 20, 50-58, 91-100, 105 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sherman (WO 01/28436 A1). The material is clearly anticipated and therefore the applicant will easily locate the corresponding claimed portions within the document, therefore only portions that may require brief explanation due to interpretation will be discussed. The yoke (68) consisting of a pair of jaws that may be moved from an open (extended) position or a closed (locked ) position to releasably engage the connection element and the anchors. The guide end shown in Figure 24 has concave surfaces oriented toward one another.

#### ***Allowable Subject Matter***

Claims 18, 101-104 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hourahane, US Pat# 4672957- surgical device; Zehnder, US Pat# 2697433- guide; St. Onge, US Pat# 6605088- bone setting apparatus; Masland, US Pat# 1308799- setting device; Kluger, US Pat# 4733657 aligning device; Hopf, US Pat# 5702395- spine device.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert W. Amareld, Jr. whose telephone

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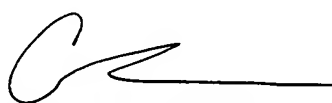
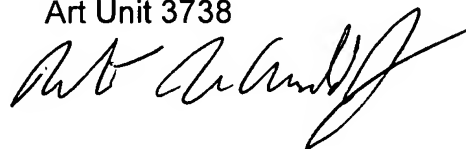
number is 571-272-6170. The examiner can normally be reached on M-F 9am - 5pm EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine M. McDermott can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RWA

Robert W Amareld, Jr.  
Examiner  
Art Unit 3738



CORRINE McDERMOTT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700